



## Exempt Action Final Regulation Agency Background Document

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| <b>Agency name</b>                                 | Virginia Department of Transportation (Commonwealth Transportation Board)                                  |
| <b>Virginia Administrative Code (VAC) citation</b> | 24 VAC 30-61   |
| <b>Regulation title</b>                            | Rules and Regulations Governing the Transportation of Hazardous Materials Through Bridge-Tunnel Facilities |
| <b>Action title</b>                                | Minor Revisions to Regulation to Correct/Clarify/Update Text   |
| <b>Final agency action date</b>                    | March 16, 2011   |
| <b>Document preparation date</b>                   | February 25, 2011  |

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

These regulations set forth the rules for users of state-owned bridge-tunnel facilities (four urban, water-proximate facilities in the Hampton Roads District, and two rural, distanced-from water facilities in the Bristol District) transporting hazardous materials. The Office of the Attorney General in correspondence dated July 25, 2011 confirmed that the CTB has statutory authority under §§ 33.1-12 (3) and 33.1-49 of the Code of Virginia to adopt and amend the regulations, and that the action is exempt under § 2.2-4006 A (3), relating to changes that are of "style or form or corrections of technical errors."

During a Periodic Review, VDOT determined that these regulations needed minor attention to update/correct/clarify some provisions. Specifically, the following changes were made:

- 24VAC30-61-20: Revise text to eliminate listed phone numbers at each facility and replace with an agency website address where contact information is available;
- 24VAC30-61-20: Correct reference to "I-64" in table of facilities to read "I-664;"

- 24VAC30-61-30: Revise text to eliminate the phone number at the VDOT Emergency Operations Center in favor of an agency website address where contact information is available;
- 24VAC30-61-40: Revise text to eliminate the phone number for the Chesapeake Bay Bridge-Tunnel and replace with a website address where contact information is available; and
- 24VAC30-61-40: Revise "Combustible Liquids" row in "NO RESTRICTIONS" table to reflect content of information currently used at VDOT facilities covered by the regulation.

The following information is supplied to address §§ 2.2-4007.1 (E) of the Code of Virginia, concerning analysis of regulatory impact on small businesses to minimize economic impact consistent with applicable law:

**Economic impact on small businesses.** The economic impact of the regulations on a business is not determined by the business size. The regulation is written to ensure public safety at state-owned bridge-tunnel facilities in a manner consistent with federal regulations for the transportation of hazardous materials, and all businesses are subject to the same regulatory provisions.

**Continued need for the rule.** These regulations are designed to ensure the safety of the traveling public, as well as preserve the infrastructure of each facility.

**Nature of complaints or comments received concerning the regulation from the public.** The public made no comments concerning the regulation during the public comment period following the publication of the Notice of Periodic Review.

**Complexity of the regulation.** At one time, these regulations contained lists of chemicals (documentation accompanying a 1995 comprehensive revision noted that over 1,850 were listed), along with the types and sizes of containers in which transportation would be lawful. In practice, it was difficult to keep the regulation current with changes in federal law concerning transportation of this cargo or changes in industry practices, since the amendment processes then in place were cumbersome to complete, and were not compatible with the need to make multiple random changes to the tables.

As a result, both VDOT personnel and the regulated parties found it difficult to understand or comply with these regulations. However, once the lists were revised in 1995 to correspond to hazard classes covered by the federal regulations, the regulations became much easier to administer, since new commodities are added to one of nine hazard classes, and the number of hazard classes do not change. VDOT believes that this format clarifies the requirements to the greatest extent possible without compromising public safety and benefit. Finally, having only three classifications (Restricted, Prohibited, and No Restrictions) also contributes to the clarity of these regulations.

**Extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation.** These regulations were intended to be consistent with federal regulations in 49 CFR § 172.101, but applied to the transportation of hazardous materials at state-owned bridge-tunnel facilities.

**Length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.** Some form of regulation addressing this subject has been in existence since 1957, and, over time, these regulations have been revised in response to changing operational conditions. These regulations were last amended in 2001. The prevalence of the Internet as a resource for information has made the need for lists of phone numbers in the regulatory text unnecessary, and should improve the public's ability to access accurate information about the regulations. There have been no changes in economic conditions or other factors to make changes in these regulations other than those discussed in this document.

**Statement of final agency action**

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

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The Commonwealth Transportation Board amended the *Rules and Regulations Governing the Transportation of Hazardous Materials Through Bridge-Tunnel Facilities* (24 VAC 30-61) on March 16, 2011.

**Family impact**

Assess the impact of this regulatory action on the institution of the family and family stability.

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This regulatory action is not expected to affect the institution of the family and family stability.

**Periodic review**

If this final regulation is not the result of a periodic review of the regulation, please delete this entire section. If this final regulation is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

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(1) No comments were received from the public during the public comment period following publication of the Notice of Periodic Review.

(2) VDOT believes that the regulation meets the criteria set out in Executive Order 14 (2010) as discussed below:

*Necessary for the protection of public health, safety, and welfare* - these regulations address the transportation of hazardous materials along any of the state-owned bridge-tunnel facilities in the Commonwealth. Clearly, any unsafe transportation of corrosive, poisonous, or combustible material would pose a potential threat to life and property, as well as the economic well-being of the region where the facility is located, should an accident occur. Therefore, these regulations are necessary to protect public health, safety, and welfare.

*Clarity and understandability* - these regulations describe the facilities subject to and exempted from their application, include Internet addresses to secure further information, and present pertinent transport information in tabular format under three classifications that are matched to federal hazard classes. This approach makes the regulations easy to understand and administer. VDOT believes that the lack of public comment received is an indication that the public shares this viewpoint.